



Maryland Health Care Commission: Nursing Home Acquisitions Transparency Study

WORKGROUP MEETING 2

AUGUST 4, 2023



Agenda August 4, 2023 2-4pm

1. Welcome
2. Meeting Minutes: July 14, 2023
3. Review of What We Have Learned So Far: Ben Steffen, Executive Director, Maryland Health Care Commission
4. Private Equity and Its Growth in Healthcare, Dr. Atul Gupta, University of Pennsylvania
5. Private Equity: Looking Toward the Future, Shelly Martin, Office of Attorney General, Consumer Protection Division
6. Review and Discussion of Ownership Structures
7. Next Steps



Private Equity

Positive

- ▶ More responsive to competitive and financial incentives
- ▶ Increases productivity/efficiency
- ▶ Improved financial performance by reducing costs and increasing revenue
- ▶ Can provide economy of scale

Negative

- ▶ Impact on quality outcomes
- ▶ Increased Medicare spending
- ▶ Multiple complex layers making it difficult to know who owns what (little to no transparency i.e., private)
- ▶ Little to no accountability on the part of the PE firm-facilities are not “technically owned”
- ▶ Private equity firms can succeed even if the facility fails (insulated from consequences)



Hart-Scott-Rodino Antitrust Improvement Act of 1976

- ▶ Antitrust Improvement Act of 1976- Federal law requires companies planning merger transactions above a certain threshold to inform the federal trade commission and DOJ in advance of transaction to ascertain (usually within 30 days where the FTC and DOJ can ask additional questions) the potential competitive impact of the acquisition
- ▶ Applies if the transaction will impact US commerce and (a) one party has \$151.7M or more in assets and the other party has \$15.2M or more in assets, (b) the amount of stock the acquirer has is valued at \$272.8M or more, (c) the assets of the other party held by the acquirer after the transaction is \$68.2M or more (raised in 2018 to \$84.4M)
- ▶ Private equity investment strategy may circumvent antitrust regulations
- ▶ Strategy of roll ups or purchasing facilities one by one so that each purchase is below the threshold and consolidation occurs over time
- ▶ Upcoming conference call August 9th 3pm by National Academy for State Health Policy on the FTC proposed guidelines and consideration of lowering the thresholds for the transaction



Current Maryland Approach

Strengths

- ▶ Quick turnaround time (30 days)
- ▶ Additional documentation inside/outside of what is currently in the regulation collected and shared with the Commission on:
 - ▶ quality ratings, Special Focus Facility status, and abuse flags
 - ▶ when the facility was last acquired
 - ▶ Memorandum of Understanding with Medicaid
 - ▶ open court cases
 - ▶ OIG exclusions

Weaknesses

- ▶ Only quality assessment currently collected during the additional documentation collected is the Medicare 5-star rating
- ▶ Reporting requirement only with no ability for the Commission to act on findings
- ▶ Cross checking data with OHCQ but not summarizing/collaborating
- ▶ Little to no transparency in ownership data



What is the Goal?

- ▶ Review of other State legislation: (a) requiring that the acquired facility achieve a certain quality benchmark within a certain time frame as part of the acquisition agreement, (b) require that the acquiring entity spend a certain revenue percentage on resident care, (c) impose limits on fees/debt-funded dividends to private equity owners which may reduce incentives to implement policies that prioritize profit over quality of care, (d) consider eliminating all three and four bed- rooms as a condition of the acquisition.
- ▶ Create a tool for denial if necessary (what will be the parameters under which Commission staff will create a summary? Quality score below 2 stars? Abuse/SFF flags? Other ideas?)
 - ▶ Commission summary of findings to OHCQ
 - ▶ OHCQ will share findings with the Health Secretary
 - ▶ Health Secretary has the ability to take action (approve, revoke, deny licensure)
 - ▶ Consider -if we stop an acquisition will this force the nursing home to close?



Discussion Questions

- ▶ Should the State support/oppose private equity as an investment model for nursing homes and other health care facilities?
- ▶ How is private equity impacting quality? Examples?
- ▶ Should we increase surveillance of private equity transactions and if so, how?
- ▶ Should the focus be on transparency instead of singling out private equity?



Next Steps

- ▶ Meeting 3 will be at the end of August. We'll discuss:
 - ▶ 3- and 4-bed rooms
 - ▶ How to assess quality
 - ▶ Possible guest speaker who will talk about investments and nursing homes